

# **Intro to SBA Lending – Part 3**

Tuesday, January 31 – 11:00 a.m. Eastern

For technical assistance, contact the  
AT&T Helpdesk at 888-796-6118

**Thank you!**



*U.S. Small Business Administration*

West Virginia District Office

# **Intro to SBA Lending**

## **Part 3**

---

**Presented by**  
**West Virginia District Office**  
**(Special Thanks to Richmond District Office)**



*U.S. Small Business Administration*

# Part III Session Includes:

---

- Servicing Actions
- Liquidation Status Transfer
- Site Visit & Reporting Requirements
- Guaranty Purchase Requests

# SOP 50 57 Version 2

- On Nov. 24, 2015 SBA announced the issuance of SOP 50 57 2, which became effective Dec. 1, 2015
- Download it at:  
[https://www.sba.gov/sites/default/files/sops/SOP\\_50\\_57\\_2.pdf](https://www.sba.gov/sites/default/files/sops/SOP_50_57_2.pdf)
- [https://www.sba.gov/sites/default/files/sops/SOP\\_50\\_57\\_2\\_Tracked\\_Change\\_Version.pdf](https://www.sba.gov/sites/default/files/sops/SOP_50_57_2_Tracked_Change_Version.pdf)

# SOP 50 57 2

- Combined servicing and liquidation SOP covering Advantage loans.
- In the **absence of clear policies and parameters** related to **Prudent loan servicing and liquidation**, lenders had no time constraints and consequences.
- New policies surrounding Prudent servicing and liquidation of SBA's guaranty purchased loans will provide an **incentive** to encourage participating lenders to **resolve guaranty purchased 7(a) loans** in a timely and commercially reasonable manner, and add consequences for when lender fails to comply with these policies.
- SOP **provides clarification** on topics which frequently create confusion between lender and SBA.

# SOP 50 57 2 - 7(a) LOAN SERVICING and LIQUIDATION

Please consult SOP 50 57 2 for detailed information on how to handle servicing and liquidation of SBA loans.

- Sets out the SBA standard operating policies and procedures for the administration of Advantage Loans that are in "regular servicing" and "liquidation" status.
- An SBA loan:
  - Moves into regular servicing status when fully disbursed:
    - Term loans are considered fully disbursed when loan has been closed and final loan disbursement has been made.
    - Revolving lines of credit are considered fully disbursed when loan has been closed and initial loan disbursement has been made.
  - Moves from "regular servicing" status to "liquidation" status if the loan is in default and has been classified in liquidation pursuant to Chapter 14 of SOP 50 57 2.

# **CONTENTS OF SOP 50 57 2- 7(a) LOAN SERVICING and LIQUIDATION**

## **Table of Contents**

<b>Chapter 1. Introduction</b>	<b>Chapter 17. Real Property Collateral Liquidation</b>
<b>Chapter 2. Definitions</b>	<b>Chapter 18. Personal Property Collateral Liquidation</b>
<b>Chapter 3. Lender Responsibility and Authority</b>	<b>Chapter 19. Acquired Collateral</b>
<b>Chapter 4. Loan Payment Administration</b>	<b>Chapter 20. Offer in Compromise</b>
<b>Chapter 5. Environmental Risk Management</b>	<b>Chapter 21. Litigation</b>
<b>Chapter 6. Servicing Requests</b>	<b>Chapter 22. Expenses and Recoveries</b>
<b>Chapter 7. Modification of Note</b>	<b>Chapter 23. Loan Guaranty Purchase Requests</b>
<b>Chapter 8. Modification of Collateral Requirements</b>	<b>Chapter 24. Denial of Liability on 7(a) Guaranty</b>
<b>Chapter 9. Insurance Coverage</b>	<b>Chapter 25. Inspector General Referrals</b>
<b>Chapter 10. Modification of Management Covenants</b>	<b>Chapter 26. Charge-off and Wrap-up Procedures</b>
<b>Chapter 11. Assumption, Assignment or Sale of Loan</b>	
<b>Chapter 12. Deferrals</b>	
<b>Chapter 13. Delinquent Secured Senior Loans</b>	
<b>Chapter 14. Classifying Loans in Liquidation</b>	
<b>Chapter 15. Site Visits</b>	
<b>Chapter 16. Workouts</b>	

# Credit Bureau Reporting

SOP 50 57 2 provides guidance on credit bureau reporting requirements. (Chapter 3 – Lender Responsibility and Authority – pages 28-29)

- a. Lenders are required to report borrowers of SBA-guaranteed loans to the commercial credit reporting agencies. Reporting of guarantors is not required.
- b. Lenders submit reports to the commercial credit bureau reporting agencies. Appendix 3 of the [Guide to the Federal Credit Bureau Program \(“GFCBP”\)](#) lists the designated credit reporting agencies for commercial accounts.
- c. Lenders are required to report commercial account information to the appropriate credit reporting agencies whenever they extend credit via an SBA guaranteed loan. Lenders should continue to report information concerning the extension of credit, including servicing, liquidation, and charge-off activities throughout the life-cycle of the loan.
- d. Generally, Lenders are required to provide information necessary to establish the identity of the Borrower such as:
  - Name, address, and taxpayer identification number;
  - The amount, status, and history of the debt; and
  - The agency or program under which the debt arose.

**Note:** The GFCBP requires reporting on a quarterly basis, but states "more frequent updates may be provided as necessary to maintain the integrity and accuracy of the information being reported." (GFCBP – Reporting Commercial Account Information - page 3-2).

**Note:** Each credit reporting agency will have their own data element requirements on credit bureau reporting, in addition to or in place of the above items. Lenders should contact the individual credit reporting agency for the applicable requirements.



# Servicing Actions

- SBA has developed a Servicing and Liquidation Action Matrix (will be sent) for Advantage (7(a)) loans which outlines actions that:
  1. **Do not require notification to or approval by SBA** (“unilateral authority”);
  2. **Require notification to SBA but not approval by SBA;**
    - Depending on the disbursement status (partial or full) the Lenders notifies either the LGPC or the corresponding Commercial Loan Servicing Center. *If lender notifies SBA by ETRAN of a change, a separate notification to the center is not necessary.*
  3. **Require SBA approval**
    - Prior to full disbursement of the loan, the action request must be sent to the LGPC.
    - After full disbursement, the request must be sent to the Commercial Loans Servicing Center servicing the state where the borrower is located. It must include the SBA loan number, business name including the Trade Name, and the requested action and justification.

# Servicing and Liquidation Actions Matrix



## Servicing and Liquidation Actions 7(a) Lender Matrix

**Disclaimer:** The Office of Financial Program Operations (OFPO) develops and distributes tools, such as this loan action matrix, which are designed to make it easier for SBA lending partners to find and comply with Agency Loan Program Requirements. OFPO makes every effort to ensure that each tool is accurate at the time it is developed and updated whenever there is a relevant change. Use of these tools, however, is not a substitute for keeping up-to-date with SBA Loan Program Requirements or complying with them. In the event of a conflict between a tool relied upon by a Lender and the applicable Loan Program Requirement, the Loan Program Requirement will prevail.

**Please see Footnotes at end of document. All lender actions must comply with SBA loan program requirements.**

Lenders are required to use E-Tran Servicing for the actions marked with an X in the E-Tran Required column below. Lenders are required to notify the appropriate Center for other actions, as identified below. For actions requiring SBA notification via the Center, Lenders will receive a reply acknowledging that the notification was received. Actions submitted to the Center that do not require SBA notification or prior SBA approval will not receive an acknowledgement.

	Unilateral Actions			
	E-Tran Required	Notify Center	No Notification Required	Requires Prior SBA Approval
<p>If a lender makes a change using E-Tran servicing, a separate notification to SBA is not required and Should not be sent.</p>				
<p><b>Approved Loans Prior to Final Disbursement - See SOP 50 10 5, Subpart B</b>  <i>*Revolving lines of credit are considered fully disbursed upon initial disbursement</i></p>				
Changes to Loan Authorization within loan program guidelines:				
Loan approved under delegated authority <sup>1</sup>			X	
Loan approved by the Standard 7(a) Loan Guaranty Processing Center (LGPC)				X
Increase or Decrease loan amount on loans approved under delegated authority <sup>1</sup>	X			
Increase or Decrease loan amount on loans approved by the Standard 7(a) LGPC				X
Change in SBA's Guaranty percentage				X
Change interest rate prior to initial disbursement <sup>2</sup>	X			
Change interest rate after initial disbursement <sup>2</sup>		X		
Change an obligor EIN or SSN for loan approved under delegated authority		X		
Change loan maturity date	X			
Extend final disbursement date			X	
Change Obligor's address or legal/trade name of business	X			
Cancel SBA Guaranty prior to initial disbursement <sup>7</sup>	X			
Cancel SBA Guaranty after initial disbursement <sup>7</sup>	X			
Reinstatement of SBA Guaranty				X
<p><b>Loans in Servicing &amp; Liquidation (after final disbursement)</b>  <i>See SOP 50 57 and 13 CFR 120.533 and 120.536</i></p>				
Activity creating real, apparent, or potential conflict of interest/ Confer a Preference <sup>3</sup>				X
Release Borrower or Guarantor				X
Compromise principal balance owed <sup>4</sup>				X
Assumption of loan with release of original Borrower / Guarantor				X
Take title to any property in the name of SBA				X
Take title to Contaminated property, or take over operation or control of a business that handles Hazardous Substances or is located on Contaminated property.				X
Emergency Purchase from secondary market				X
Determination of involuntary prepayment / subsidy recoupment fee				X
Reinstatement of SBA Guaranty				X
Extraordinary servicing fee per 13 CFR 120.221(b)				X
Increase loan amount on loans approved by the Standard 7(a) LGPC <sup>5</sup>				X
Transfer, sell or pledge more than 90% of a loan				X
Transfer, sell or pledge 90% or less of a loan		X		
Decrease to loan approval amount or SBA's Guaranty percentage		X		
Terminate SBA Guaranty prior to submission of Guaranty Purchase Demand Kit <sup>7</sup>	X			



U.S. Small Business Administration

# ETran Servicing

**As of February 1, 2015, all Advantage (7(a)) lenders are required to notify SBA via ETran the following unilateral actions:**

- Cancel SBA Guaranty\*
- Extend Maturity Date (prior to the stated maturity expiring)\*
- Change loan from revolving to non-revolving
- Change Borrower's name or address
- Assumption of loan without Obligor release (adding a borrower)
- Adding a Guarantor to the loan
- Classify loan "In Liquidation"

\* For loans sold in secondary market, prior written consent from the investor and/or Fiscal Transfer Agent is required for any action that alters the original loan repayment terms **before the lender approves the action and notifies SBA via ETran.**

# Post Approval Requests

## Non-Delegated Loans

- If not fully disbursed, lenders must submit requests for SBA approval of:
  - An increase or decrease in the loan amount; or
  - An increase or decrease in the guaranty percentage.
- Approval procedure for lenders:
  - Submit written request to the LGPC ([7aloanmod@sba.gov](mailto:7aloanmod@sba.gov) or fax 916-735-1975) including lender name, lender contact, phone number, fax number, borrower name, SBA Loan Number and the following:
    - How it is now;
    - How it should be; and
    - Why – justification for change and supporting documentation.
- For loans fully disbursed, including Express and EWCP:
  - Refer to SOP 50 57 2 pages 49-50

# Post Approval Requests

## Delegated Lenders (PLP and Express)

- If not fully disbursed:
  - For increase or decrease in the loan amount, lender obtains approval directly in ETran. Approval of increase or decrease in ETran will constitute SBA's approval.
  - For an increase or decrease in the guaranty percentage, submit requests for approval by following the procedures set forth in the previous slide.

# Moving Loans into Liquidation Status

- Advantage (7(a)) Loans Must Be Classified in Liquidation Status when the Note is accelerated. Accomplished in ETran.
- When the Note Should Be Accelerated
  - Lenders with Non-SBA Loan Portfolios may decide whether to accelerate the Note based on their own policies and procedures for similarly-sized non-SBA guaranteed commercial loans.
  - Lenders without Non-SBA Loan Portfolios should accelerate whenever there has been an event of default on the Note and it is clear to a prudent lender that the Obligor(s) cannot, or will not, keep the loan current through regularly scheduled payments.
  - Loans sold on the secondary market **must be** immediately repurchased by the lender, or must request that SBA purchase it.
- Express and Small Loans to Servicing Center
- Loans over \$350K to NGPC in Herndon

# Prudent Servicing & Liquidation

- The term 'Prudent' is now included in the Definitions Chapter.
- It emphasizes lenders must service their SBA portfolios in a commercially reasonable manner and complete the resolution of SBA loans within 24 months of guaranty purchase (Chapter 2, page 17).

# Prudent Servicing

Definition: **Loan Program Requirements** are requirements imposed upon Lenders by statute, SBA regulations, any agreement the Lender has executed with SBA, SBA SOPs, official SBA notices and forms applicable to the 7(a) loan programs, and loan authorizations, as such requirements are issued and revised by SBA from time to time. (13 C.F.R. § 120.10)

*Prudent Servicing* means Lenders must service Advantage (7(a)) loans in their portfolio no less diligently than their non-SBA portfolio, and in a commercially reasonable manner, consistent with prudent lending standards, and in accordance with Loan Program Requirements.

Those Lenders that do not maintain a non-SBA loan portfolio must adhere to the same prudent lending standards for loan servicing followed by commercial lenders on loans without a guarantee. (13 C.F.R. § 120.535(a))



# Prudent Liquidation

*Prudent Liquidation* means Lenders must liquidate and conduct debt collection litigation for Advantage (7(a)) loans in their portfolio no less diligently than for their non-SBA portfolio, and in a prompt, cost-effective and commercially reasonable manner, consistent with prudent lending standards, and in accordance with Loan Program Requirements and with any SBA approval of either a liquidation or litigation plan or any amendment of such a plan.

- Lenders that do not maintain a non-SBA loan portfolio must:
  - adhere to the same prudent lending standards followed by commercial lenders that liquidate loans without a government guarantee.
  - also operate in accordance with Loan Program Requirements and with any SBA approval of either a liquidation or litigation plan or any amendment of such a plan.

# Prudent Liquidation

- Prudent liquidation also means a Lender submits a Wrap-Up Report acceptable to SBA on a SBA loan no later than either 24 months from SBA guaranty purchase date or 24 months after the effective date of the SOP for loans where SBA has previously honored the guaranty and lenders are actively liquidating, whichever is longer, unless a written extension is granted by SBA from the applicable timeframe based on extenuating circumstances.

# Extension of Prudent Liquidation Deadline

May be granted by SBA on a case by case basis if an extenuating circumstance, such as a judicial foreclosure or bankruptcy proceeding, prevents compliance with the deadline by the lender. Extensions must be granted in writing.

- Lender must submit an extension written request to appropriate Loan Center as soon as it becomes apparent an extenuating circumstance will prevent deadline compliance, and should be submitted no later than 30 calendar days prior to deadline expiration.
- Request must include (minimum):
  - Detailed description of extenuating circumstance
  - Supporting documentation evidencing extenuating circumstance
  - Estimate on when Prudent Liquidation will be completed
  - Status report

# Site Visit & Reporting Requirements

SITE VISIT - SBA requires all lenders to make site visits and prepare a detailed report containing an inventory of remaining assets and an assessment of their condition and value. Site visits must be performed:

- Within 60 days of an unremedied payment default or sooner if there are assets with significant value that could easily be moved or depleted.
- Within 15 calendar days of the occurrence of an adverse event (i.e., bankruptcy filing, business shutdown, or foreclosure by a prior lienholder), which would cause the loan to be placed in liquidation or sooner if collateral could be removed or lost.

## REPORTING REQUIREMENTS – LOANS IN LIQUIDATION

- 1502 REPORT: When loan is transferred into liquidation status, remember to change the status code on your monthly 1502 report to “5” for *in-liquidation* status.

# Reporting Requirements

## Liquidation Status Reports

- Lenders will now be required to submit semi-annual loan status reports to SBA beginning 6 months after guaranty purchase, instead of quarterly reporting. (Ch. 3 – Lender Responsibility and Authority – page 29). Reporting will continue until liquidation is complete at which time a final wrap-up report is due.
- Status report on each loan must include, at a minimum, a description of the status of the following
  - Borrower status;
  - Obligors;
  - Collateral;
  - REO and acquired personal property collateral;
  - Workout or restructuring negotiations;
  - Recoveries and expenses incurred
  - Liquidation activities and litigation proceedings;
  - Timelines as to when Lender's resolution activities are expected to be completed.

# HOW TO REQUEST LIQUIDATION STATUS TRANSFER

- The status of the loan must be changed to “In Liquidation” in ETran Servicing.
- The Commercial Loan Servicing Center will transfer the file to the applicable liquidation unit:
  - SBAExpress Loans and Small Loans \$350K and under approved on or after January 1, 2014 will be liquidated in the CLSC.
  - All other loans will be liquidated by the National Guarantee Purchase Center.

# Receiverships

- SOP 50 57 2 added guidance with using receivership to liquidate a loan.
- Not covered in this session.
- See Chapter 17 pages 96-97 for more information.

# Resolution of Loans in Liquidation Status

New SOP provides guidance on the three ways to resolve loans once they are classified in liquidation status – 1) Return to Regular Servicing, 2) Pay in Full, or 3) Charge-off. (Chapter 14 – Liquidation)

- Returning loans to Regular Servicing – Removed the requirement for three (3) months of payments prior to returning a loan to regular servicing. Loans can now be returned to regular servicing once a written agreement is in place.
- *SBA loans should be removed from liquidation status and returned to regular servicing **when the borrower has agreed to the resumption of regular payments** pursuant to a workout agreement, bankruptcy plan, reaffirmation agreement, assumption, or other written agreement that provides for resumption of regular payments.*

**Note:** If a workout is feasible, negotiations should begin immediately and a final workout plan should be put into effect as soon as possible. **If an acceptable workout plan is not in place within a reasonable time, (e.g., 60 calendar days), the Lender should move forward with its plan for enforced debt collection.**



# Resolution of Loans in Liquidation Status

- Pay in Full – Added guidance for reclassifying loans as Paid in Full, distinguishing the difference between guaranty purchased and unpurchased loans.

***SBA loans should be removed from liquidation status and classified as “paid in full” when the debt owed on the SBA guaranteed loan has been satisfied. (Purchase of the guarantee from the secondary market should not be confused with satisfaction of the debt through payment by an Obligor or through liquidation recoveries.)***

# Resolution of Loans in Liquidation Status

- Charge-off – Added flexibility for SBA to charge off a loan when a lender wrap up report is unavailable.

***SBA loans should be removed from liquidation status and classified as “charged-off” by SBA when:***

- a. The Lender’s Wrap-up Report has been approved, and the remaining loan balance has been charged-off by SBA; or***
- b. The Lender has failed to submit an acceptable Wrap-up Report within the timeframe specified by SBA and the SBA Loan Center has determined that the loan should be charged off.***

# Charge Off

## When Charge Off is Appropriate

- SBA charge-off is appropriate when SBA has received a Lender Wrap-up Report that identifies:
  - All reasonable efforts have been exhausted to achieve recovery from: (1) voluntary payments on Note; (2) compromise with Obligors; (3) liquidation of collateral; and (4) enforced collection; and
  - Further collection efforts are not cost effective or practical; and
  - Remaining legally obligated Obligors cannot be located, are unable to pay loan balance, or are unwilling to pay loan balance; or
  - Loan balance is uncollectible due to discharge in bankruptcy (i.e., release of debtor from any further personal liability for pre-bankruptcy debts), expiration of statute of limitations (i.e., passing of deadline for suing), or existence of another defense available to remaining Obligors under state or federal law.

# Charge Off/Wrap Up Report

- When you are satisfied that all collection efforts have been exhausted and liquidation is complete, you must notify SBA immediately via a Wrap Up Report so that we can charge off the loan.
- **Wrap-up Report**
  - must be prepared and submitted in electronic format to appropriate SBA Loan Center for review and approval within 30 calendar days after Prudent Liquidation is complete or upon receipt of a request from SBA, whichever occurs first.
  - Once approved by SBA, remaining loan balance, if any, will be charged-off by SBA and any loan that is legally collectible by SBA will be referred to Treasury for further collection efforts after assignment of the appropriate Loan Documents by Lender to SBA.
  - In addition to the above requirement, Lenders must comply with SBA's Prudent Liquidation Deadline if the Wrap-Up Report has not been previously submitted. That definition requires Lenders to prepare and submit an acceptable Wrap-up Report in an electronic format to the appropriate SBA Loan Center no later than either 24 months after purchase by SBA or 24 months after the effective date of SOP 50 57 2, whichever is later, unless an extension is approved in writing by SBA prior to the expiration of the applicable 24 month period.
  - Consequences of Failure to Submit a Timely Wrap-up Report - If Lender fails to submit a Wrap-up Report within timeframe specified above, in addition to referring Lender to SBA's Office of Credit Risk Management for possible enforcement action, **SBA has right to require Lender to purchase loan back from SBA, charge-off the loan balance and, if appropriate, to refer loan to Treasury after assignment of the loan documents.**

# Assignment of Loan Documents

At the time lender submits final Wrap-up report lenders are required to assign loan documents to SBA if it is determined that obligors will be referred to Treasury. (Chapter 26 – Charge-off and Wrap-up Procedures – pp. 158-159)

## *Assignment of Loan Documents to SBA*

- *Lenders are to provide an assignment of loan documents as part of the Lender's Wrap-Up Report submission when Lender determines that referral to Treasury for further collection is appropriate.*
- *SBA may request Lenders to assign certain Loan Documents to SBA at any time.*

Upon receipt of such a request, Lenders must assign all Loan Documents requested to SBA within 5 business days. Do not assign Loan Documents to SBA unless SBA makes a prior written request for an assignment or the assignment is provided as part of the Lender's Wrap-Up Report submission.

# Wrap-Up Report Formats

A Wrap-Up Report must be submitted in electronic format to the appropriate SBA Loan Center for review and approval and must contain the information outlined in the Wrap-Up Report template on SBA's website(s):

- Loans at NGPC: <https://www.sba.gov/managing-business/forms/lending-forms/sba-charge-tabs-wrap-report>
- Loans at CLSC: [https://www.sba.gov/sites/default/files/files/SBA\\_Charge\\_Off\\_Tabs\\_Wrap-Up\\_Report\\_08052015v2.pdf](https://www.sba.gov/sites/default/files/files/SBA_Charge_Off_Tabs_Wrap-Up_Report_08052015v2.pdf)

# When to Request & How to Request Guaranty Purchase

Note: Since SBA permits lenders to request purchase only after liquidating the business personal property, if there is any recovery on remaining collateral after SBA honors its guaranty, the lender must remit to SBA its share of the proceeds (use SBA Form 172 available at [www.pay.gov](http://www.pay.gov)).

**WHEN TO REQUEST:** For loans approved on or after May 14, 2007, lenders must liquidate business personal property securing a loan prior to requesting SBA to purchase the guaranteed portion of the loan.

- Exception: lender may request purchase if there is a bankruptcy, judicial foreclosure, litigation or other unusual liquidation circumstance that is likely to extend the liquidation process more than 90 days past the earliest date that the lender could request purchase.

**HOW TO REQUEST:**

Prepare ***Purchase Demand Kit*** (PDK):

- Express loans – download from <https://www.sba.gov/sites/files/files/ExpressPDKMaster.pdf> and submit to appropriate Servicing Center.
- Advantage Loans (loans approved after Jan. 1, 2014 < \$350K)- download PDK from the **appropriate CLSC**.
- Non-Express/Small loans before Jan. 1, 2014 and <\$350K after – download from <http://www.sba.gov/content/regular-7a-guaranty-purchase-package-tabs> and submit the **National Guaranty Purchase Center**

# Requests for Reimbursement of Recoverable Expenses

New SOP clarifies SBA's review of expense reimbursement will occur at the time of guaranty purchase and SBA charge off. (Chapter 22 – Expenses and Recoveries – page 136)

- When Requests May be Submitted

To prevent backlogs and expedite the SBA review process, requests for reimbursement or for approval of Recoverable Expenses deducted from recoveries may only be submitted at the following times:

- Submission of Loan Guaranty Purchase Request
  - Requests for SBA reimbursement of Recoverable Expenses or approval of expenses paid for from recoveries may be submitted with the Lender's Purchase Package.
- Submission of Wrap-up Report
  - All remaining requests for SBA reimbursement of Recoverable Expenses or approval of expenses paid for from recoveries should be submitted with the Lender's Wrap-up Report on the loan.



# Annual Service Fee Collection

New SOP clarifies the collection of annual fees at the time of guaranty purchase and introduces a policy limiting the collection of annual Service fees to 120 days if liquidation is resolved and a wrap-up report is submitted to SBA with the guaranty purchase request. (Chapter 23 – Loan Guaranty Purchase Requests – page 139)

- ***For loans approved before December 8, 2004, SBA will collect an Annual Service Fee through the date of guaranty purchase in the amount in place at the time the loan was approved.***
- ***For loans approved on or after December 8, 2004:***
  - ***If the Lender submits a Wrap-up Report acceptable to SBA concurrently with its guaranty purchase request, SBA will collect an Annual Service Fee in the amount in place at the time the loan was approved for a maximum of 120 calendar days from the last interest paid to date and “0” percent thereafter.***
  - ***If the Lender does not submit a Wrap-Up Report acceptable to SBA concurrently with its guaranty purchase request, SBA will collect an Annual Service Fee in the amount in place at the time the loan was approved through the date the Lender submits demand of the guaranty purchase and a complete guaranty purchase package acceptable to SBA.***

# Charge Off & Referral to Treasury

## **Loan Document Retention:**

Lender should retain the original loan documents (note, guaranties and collateral documentation) along with the original signed loan application materials (including 912) signed by the borrower until the loan is charged off or paid in full. The lender may image all other documents.

- After SBA charges off a loan, if there are any parties remaining (i.e. they have not been discharged from bankruptcy and/or not released as part of an Offer in Compromise), they will be referred to the U.S. Treasury Offset Program for further collection.
- Once this takes place the servicing of the loan shifts from the lender to Treasury or their fee agents. If any recoveries are received they will be shared with the lender, based on the guaranty rate. The bank's share, less any expenses incurred by Treasury, will be forwarded directly to the bank.

# Credit Bureau Reporting after Charge Off

SBA will now report the entire amount of the loan balance once a loan is charged off. Lenders will continue to report the entire amount of all loans up until that point. (Chapter 26 – Charge-off and Wrap-up Procedures – page 161)

- **Responsibility**

- **SBA**

- ***SBA is responsible for reporting the entire amount of all loans that have been charged-off by SBA to the appropriate credit reporting bureaus, and is also responsible for reporting charged-off debt to Federal Government delinquent debtor databases such as CAIVRS and Debt Check.***

- **Lenders**

- ***Lenders are responsible for reporting to the appropriate credit reporting bureaus the entire amount of all loans, until the time when a final Wrap-Up Report is submitted to SBA, to the appropriate credit reporting bureaus.***

# IRS Notification of Cancelled Debt - 1099-C Issuance

## Responsibility for Issuing IRS Form 1099-C

- SBA's Denver Finance Center is responsible for providing the Borrower and the IRS with IRS Form 1099-C for the aggregate amount of the indebtedness discharged.
- The aggregate amount reported by SBA will include both the SBA's and the lender's share of the SBA loan.
- As the lead lender following charge-off, SBA will comply with the reporting requirements for both SBA and the lender by filing a single return.

# Denial of Liability on 7(a) Guaranty

Chapter 24 – Denial of Liability on 7(a) Guaranty – page 145:

- 1. Failed to comply materially with a Loan Program Requirement;**
- 2. Failed to make, close, service or liquidate the loan in a prudent manner;**
- 3. Placed SBA at risk through improper action or inaction;**
- 4. Failed to disclose a material fact to SBA in a timely manner;**
- 5. Misrepresented a material fact to SBA regarding the loan;**
- 6. Sent a written request to SBA to terminate the guaranty;**
- 7. Failed to pay the guaranty fee within the period required under SBA rules and regulations;**
- 8. Failed to request that SBA purchase a guaranty within 180 days after maturity of the loan. However, if the lender is conducting liquidation or debt collection litigation in connection with a loan that has matured, SBA will be released from its guaranty only if the lender fails to request that SBA purchase the guaranty within 180 days after the completion of the liquidation or debt collection litigation;**
- 9. Failed to use required SBA forms or exact electronic copies; or**
- 10. The borrower has paid the loan in full.**

# Top Reasons for Repair and Denial

- **Lien and Collateral Issues that Result in Missed Recoveries (Generally a Repair)**
  - Failure to obtain required lien position
  - Failure to properly perfect security interest
  - Failure to fully collateralize loan at origination when additional collateral was available (in rare cases)
- **Unauthorized Use of Proceeds**
  - Proceeds disbursed for purpose(s) inconsistent with the loan authorization or subsequent modifications without a business justification. (Could be a Denial if early default and improper use of proceeds caused the failure of the business)
  - Same lender Non-SBA loan paid with PLP loan proceeds (preference)

# Top Reasons for Repair and Denial

- **Liquidation Deficiencies (Generally a Repair unless harm is the full value of the outstanding balance)**
  - Failure to conduct Site Visit which resulted in missed recoveries
  - Improper safeguarding or disposition of collateral which resulted in missed recoveries
  - Misapplication of recoveries to lender's loan when SBA-guaranteed loan has lien priority
- **Undocumented Servicing Actions (Generally a Repair)**
  - Liens not properly renewed during servicing on worthwhile collateral
  - Release or subordination of collateral without documented business justification
  - Allowing hazard insurance to lapse on major collateral and collateral was subsequently destroyed
  - Failure to maintain life insurance on principal and principal subsequently dies

# Top Reasons for Repair and Denial

- **Early Defaults (Denial if determined to be reason for business failure)**
  - Missing or unsupported verification of required equity injection (includes verification of source in some cases)
  - Missing or unsupported documentation of verification of borrower financial information with IRS when financial information was relied on in lender's credit analysis
  - Repayment analysis is not adequately justified
  - Lack of Business Valuation (business purchase) or asset appraisal (asset purchase)
- **SBA Loan Eligibility (Denial)**
  - Ineligible franchise
  - Ineligible loan purpose
  - Ineligible loan recipient (loan to an associate of lender)



# Modification of Collateral Requirements - General Requirements (Chapter 8)

**Recoverable Value** means net dollar amount that a prudent lender could reasonably expect to recover by liquidating a particular piece of collateral.

Recoverable Value is determined by deducting following amounts from Liquidation Value of the collateral: (

- a) the balance owed on senior liens (less amounts waived or subordinated by a Loan Document);
- b) Recoverable Expenses associated with any necessary lien foreclosure action; and
- c) if the collateral is likely to be acquired by SBA or the Lender at the foreclosure sale (e.g., real property), the expenses associated with the care, preservation and resale of the acquired collateral.

## EXAMPLE - **General requirements for a Substitution of collateral:**

- Collateral offered in substitution should be similar in nature or provide a higher level of confidence, and have a Recoverable Value equal to or greater than Recoverable Value of existing collateral based on an Appraisal that meets SBA requirements;
- If substitute collateral is commercial real property, adequate due diligence must be conducted to ensure that risks of Contamination are minimal (see Chapter 5 of SOP);
- There should be no more than a nominal increase (i.e., 3.5% or less) in amount of any proposed senior lien;
- Borrower should have a satisfactory credit history;
- Borrower's current financial statement should reflect ability to pay all of its obligations that will be outstanding after the substitution;
- There should be sufficient equity in the collateral to adequately secure the SBA loan after the proposed substitution;
- Release and substitution must not impair ability to foreclose upon the remaining collateral or collect loan balance from Obligors; and
- Release of existing lien(s) or proceeds thereof must be concurrent with the recording of new lien(s) in required position of priority and done pursuant to an escrow agreement signed by all of the parties involved in the transaction.

# Equity Injection: Missing or Unsupported Verification

## Express loans

If lender requires an equity injection and, as part of its standard processes for non-SBA guaranteed loans verifies the equity injection, it must do so for SBA Express loans.

## For non-Express 7(a) Loans - Acceptable Verification of Cash Injection

- A copy of a check or wire transfer along with evidence that the check or wire was processed showing the funds were moved into the borrower's account or escrow; and
- A copy of the statements of account for the account from which the funds are being withdrawn for each of the two most recent months prior to disbursement showing that the funds were available; and
- A subsequent statement of the borrower's account showing that the funds were deposited or a copy of an escrow settlement statement showing the use of the cash.

NOTE: A promissory note, "gift letter" or financial statement is not sufficient evidence of cash injection without corroborating evidence consistent with above paragraphs.

# Questions

---



# Contact Information

- Rick Haney at [Richard.haney@sba.gov](mailto:Richard.haney@sba.gov) or (304) 623-7449
- Leo López at [Leo.Lopez@sba.gov](mailto:Leo.Lopez@sba.gov) or (304) 347-5220
- WV Lenders Website:
  - <https://www.sba.gov/offices/district/wv/clarksburg/resources/west-virginia-lender-resources>